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AUTHOR	Mitchell, Susan
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ABSTRACT

Aggressive intervention by a school-choice coalition and supportive elected officials turned back threats to the Milwaukee Parental Choice Program (MPCP) posed by burdensome state regulation of private schools. MPCP continues to expand, studies report academic gains, parents are satisfied and involved, and public support has grown. Supporters of school choice must learn to overcome opponents' strategies which use threats of regulation to undermine the program in the face legislative and judicial defeats. Efforts to impose a variety of regulations on participating private schools intensified in the wake of a supportive 1998 Wisconsin Supreme Court. Drawing on the support of the governor and legislators, supporters of school choice compelled the Department of Public Instruction (DPI) to compromise, demonstrating that a coordinated response can effectively resist regulation. Opponents are continuing efforts to undermine MPCP in several ways, including: (1) spreading factual misinformation about choice schools regarding racial balance, tuition expenses, and exclusion of poorly performing students; (2) calling on the legislature to impose more regulations on choice schools; (3) appropriating the rhetoric of accountability to regulate MPCP; (4) administrative rule-making by DPI, contravening earlier legislative agreements, under the rationale that private schools must comply with federal regulations; and (5) applying the Wisconsin Pupil Nondiscrimination Act to private choice schools. Wisconsin's experience provides five key lessons for choice proponents: (1) realize that opponents will consistently use threats of regulation; (2) form strong, vigilant, unified choice coalitions to prevent these efforts; (3) beware of accountability proposals; (4) fight misinformation aggressively; and (5) support well-designed choice legislation which prevents challenges. (Contains 62 citations.) (TEJ)

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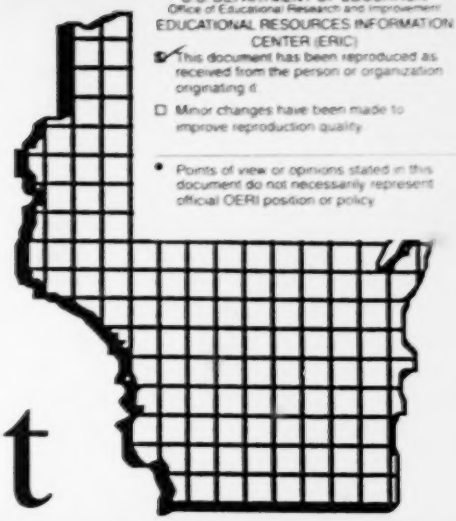

September 1999 Volume 12, Number 6

HOW SCHOOL CHOICE ALMOST DIED IN WISCONSIN

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REPORT FROM THE PRESIDENT:

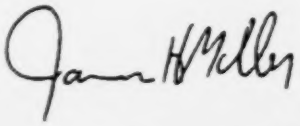
Over the last decade no issue in Wisconsin has been more closely watched here and across the country than the Milwaukee Parental Choice Program. During that time no one has played a bigger role than Susan Mitchell to insure that this educational reform has worked.

She is currently the President of the American Education Reform Council and a Senior Fellow at our Institute. Mitchell has published several important studies on educational choice and the Milwaukee Public Schools, which helped frame this issue. She was also responsible for helping organize the business community and parents in Milwaukee to support the choice program. In this study she lays out the history of the last ten years and with it the framework for anyone who wants to know what actually happened in Wisconsin with educational choice. Part of her research was contributed by George Mitchell.

One of the important lessons to be learned from Milwaukee is that passing legislation or a referendum does not insure a successful program. In Wisconsin, the legislation, once passed, simply set the stage for ongoing debates. One was judicial, which ended up in the Wisconsin Supreme Court. Another was political and was settled in Madison by our legislature and governor. The one battle that remains constant is between the educational bureaucrats and the parents who support the program. For the last several years, there has been a running battle from the bureaucrats who were trying to regulate educational choice out of business. The opponents of choice have made a decision that since they cannot win legislatively or judicially, that their best opportunity is with rules and regulations that can cripple a small, private school. Mitchell points out that there needed to be enormous organization to continue to oppose these types of arbitrary and destructive rules, whose only purpose is to stop this issue.

Finally, she describes the growth of the program. Beginning with 337 students, it has expanded to over 6000 in September of 1999. Today approximately 100 private or parochial schools participate. Additional separate studies by Harvard and Princeton scholars show significant academic gains among the choice students. The issue has evolved to where it is now being supported by a majority of Milwaukee School Board members.

Anyone from Wisconsin or around the country who wants to really know how you take an issue like educational choice and make it work should memorize this study. It is the perfect practical guide to success in public policy.



James H. Miller

WISCONSIN POLICY RESEARCH INSTITUTE, INC.

HOW SCHOOL CHOICE ALMOST DIED IN WISCONSIN

SUSAN MITCHELL

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Executive Summary

School choice supporters across the nation celebrated in 1998 when Wisconsin's Supreme Court upheld a law letting low-income Milwaukee children attend private religious schools.

Within weeks, the expanded choice program almost died.

The threat of regulation was to blame. Just weeks before the 1998-99 school year, state regulators thrust an extensive list of rules — never adopted by the legislature — at newly eligible private schools. Dozens of schools that had planned to join the program balked.

Aggressive intervention by Milwaukee's school choice coalition and supportive elected officials saved the day. State education officials retreated, dozens of private schools signed up, and thousands of new children joined the program.

The experience shows that the regulatory threat to school choice is very real. Opponents of choice understand that cumbersome rules will curtail private school participation and potentially lead to new court challenges. In Milwaukee, opponents have pursued additional regulation of private schools during the last decade as part of a clear strategy to either kill choice or limit its growth.

The good news is that their efforts have failed to halt an extraordinarily promising reform. The program has grown substantially, studies show academic gains, parents are satisfied and involved, and public support has grown.

Consider the following:

- From a modest start — seven schools and 337 students in 1990-91 — the program has grown to 86 schools and 5,830 students last year. Hundreds more students will participate in 1999-2000 and the roster of schools is approaching 100.
- Parental involvement among low-income and mostly minority families is at a level unheard of in public schools. A University of Wisconsin study cites "four years of highly consistent data [that] choice parents are significantly more involved in the education of their children than [Milwaukee public school] parents."[1] The independent publication *Education Week* said the school choice program "has deeply involved long-alienated parents in their children's education."[2]
- Separate studies by Princeton and Harvard scholars show significant gains among choice students.[3] While a third study questioned those findings, it nevertheless said that scores of choice students "do not substantially decline as [they] enter higher grades. This is not the normal pattern...[U]sually inner-city student...scores decline...in higher grades. That [choice] students held their own is a positive result for the city as a whole."[4]
- Public support for choice is growing among Milwaukee residents. Last April, they elected a slate of reform candidates to the school board, defeating five union-backed candidates who opposed school choice. As a result, the majority of the Milwaukee Public Schools (MPS) board favors more options for parents. This has produced the unprecedented situation of a public school board working side by side with choice supporters to expand parent options and support other legislative aims.

Conservative skeptics contend that such victories will be short-lived and in time will fall prey to the well-established penchant of government to solve problems with more government. Choice supporters counter that such a result is far from inevitable and that such concerns must not forestall such a promising reform.

Milwaukee provides a real test of these opposing views. The results are encouraging. Private school participation is high, reflecting minimal additional regulation. Efforts to add regulations have for the most part failed.

The key to these results has been a strong choice coalition that monitors the program vigilantly and supportive elected officials who understand that unnecessary regulation will dilute hard won gains. Repeatedly, the coalition, a diverse group that crosses political, racial, religious and economic lines, has mobilized a broad constituency for rallies, public hearings, and meetings with legislators. Among its essential elements is a group of local and national lawyers who repeatedly have stepped forward to help define and protect the constitutional and legal interests of parents and schools.

Indisputably, unity is the most important characteristic of the Wisconsin coalition. Members have learned that to survive the persistent attacks — whether in the legislature, the courts, or from regulators — a common goal and strategy are indispensable. Division among supporters aids opponents.

Other lessons from Wisconsin may help school choice supporters elsewhere. They include:

- Don't relax on the heels of legislative or legal victories because the regulatory threat awaits.
- Build strong coalitions that are prepared to work together for years and to accept responsibility for blocking attacks on school choice.
- Support well-designed legislation that reduces the chance of administrative impediments. Enlist early help from a capable legal team.

The work is critical to the long-term success of school choice.

Introduction

When Wisconsin's Supreme Court upheld a law giving low-income children the right to choose any private school, it was page one news.[4] A banner headline in the June 11, 1998, *Milwaukee Journal Sentinel* delivered this message:

Choice ruling ushers in new era

The accompanying article said the "landmark decision" could mean "fundamental changes in the Milwaukee education scene." *The New York Times* called the Wisconsin ruling "the most significant legal decision yet on the growing use of school vouchers."[5]

As school choice supporters celebrated, opponents promptly launched an effort to undercut the court ruling. They nearly succeeded. A month after the decision, expansion of Milwaukee's program was nearly dead in the water. *Investor's Business Daily* explained why:

SCHOOL CHOICE OR BIGGER GOV'T?
Milwaukee's Reform Came Wrapped in Red Tape

Without returning to court, choice opponents had almost reversed the historic ruling. While they failed, their effort illustrates opponents' three-pronged strategy to block school choice in Wisconsin and other states.

- Kill school choice legislation.
- If that fails, stop school choice in the courts.
- As a last resort, use the threat of regulation to limit private school participation.

This third prong — the regulatory threat — is a central element in the national strategy of choice opponents. As the American Federation of Teachers (AFT) points out, "private and religious schools are unlikely to participate in a voucher program" if that means state regulation in areas such as "admissions...testing, curriculum, and...religious training."[7]

School choice foes know that legislative chambers and courtrooms are not the final arenas of battle. This means that supporters "must not only contend with courts, governors, and state legislatures, but with the stealth branch of government — the administrative state," says Joseph Loconte of the Heritage Foundation.[8]

The question of whether choice supporters will be able to forestall efforts to saddle school choice programs with unnecessary rules and regulations is a critical one because many private schools won't participate in school choice if doing so means a wide range of new rules.

Advocates of publicly financed school choice programs must overcome three forces:

- **Organized school choice opponents.** Opponents support an extensive regulatory scheme, for the same reason supporters fear one: red tape will limit the number of private schools that accept choice students. The common refrain of choice foes is that the public "expect[s] private and religious schools that receive public dollars...to be regulated and held accountable...just as public schools are."[9] Opponents also know that more regulation might cause courts to invalidate choice laws if it leads to excessive entanglement of government and religion, a key legal test.
- **Other critics of school choice.** While organized choice opponents come mainly from the political left, there is another group of critics. As described in *Crisis* magazine, they "oppose school choice for reasons they believe to be in keeping with conservative principles. What seems to be the inevitable result of choice programs, according to these critics, is the death of private and parochial education as we know it" through excessive regulation.[10] A widely noted 1997 article in *The National Review* predicted that "the price to be paid, the downside [of] government vouchers for private schools...is the virtual abolition of private education through government or judicial control."[11] The president of the National Education Association (NEA), the nation's largest teacher union, said the article "elegantly undressed the 'conservative' case for school vouchers..."[12]
- **Well-intended "problem" solvers.** These persons respond to isolated or negligible problems with sweeping legislative or judicial "remedies" that would apply new requirements to all schools. Some elected officials are prone to this, seeking to please constituents or gain attention. It is precisely these persons that conservative skeptics fear.

Experience in Wisconsin demonstrates that choice supporters must understand the tactics of the organized opposition, respect the fears of conservative skeptics, and explain to the well-intended why too much regulation threatens school choice.

Otherwise, legislative and legal victories on behalf of expanded parent options will be hollow. The Wisconsin story, described in this report, describes how the regulatory threat has been kept at bay.

Section One: School Choice in Milwaukee

Milwaukee is a national laboratory for school choice and its impact on families, public schools, and the community. The nine-year old program has produced extraordinarily promising results.

Understanding these results — as well as the program's origin and design — is essential. Often, the truth is at odds with the picture opponents try to paint. Their misinformation often is used to build a case for more regulation.

Results

What if an education initiative allowed urban parents to make major decisions about their children's education? What if it substantially increased parental involvement and satisfaction? What if, at a minimum, it halted a probable decline in academic achievement as children age? What if scholars found significant gains in achievement? What if those results occurred with students whose achievement was below national norms?

Published research from three different scholarly studies shows that the Milwaukee school choice program has produced all these results.

Such gains, for a public school district, would prompt enthusiastic claims of success and recommendations for expansion.

That rarely occurs in regard to school choice results. In March of 1999, for example, when *The New York Times* and *Christian Science Monitor* described Milwaukee's program, each used only a single paragraph to explain nearly 100 pages of published research.[13]

Consider the findings of only one study — supposedly the most negative — in regard to three key questions about the Milwaukee program.[14]

- Will choice serve low-income families where children often are not academically successful?

  "The demographic profile...was quite consistent over each of the [first] five years... [S]tudents...were from very low-income families, considerably below the average [MPS] family and about $500 below the low-income (free-lunch-eligible) MPS family... Blacks and Hispanics were the primary applicants...both being over-represented compared with [MPS]... Choice students were considerably less likely to come from a household in which parents were married... Prior test scores of Choice students [showed they] were achieving considerably less than MPS students and were somewhat less than low-income MPS students."

- Can choice address parent dissatisfaction with their children's education?

  "...Choice parents were very dissatisfied with their former (MPS) schools... Satisfaction of Choice parents with private schools was just as dramatic as dissatisfaction was with prior public schools... The results were a dramatic reversal — high levels of dissatisfaction with prior public schools, but considerable satisfaction with private schools... Finally, parental involvement, which was clearly very high for Choice parents before they enrolled in the program, increased while their children were in private schools."

- Can choice affect performance on test scores?

  "The general conclusion is that there is no substantial difference...between Choice and MPS students [on test scores]...On a positive note, estimates for [Choice students] do not substantially decline [as they] enter higher grades. This is not the normal pattern in that usually urban student average scores decline relative to national norms in higher grades..."

These are direct quotes from John F. Witte, a University of Wisconsin political scientist who evaluated Milwaukee's program from 1991 to 1995. Notwithstanding his findings, choice opponents often cite Witte to claim that choice doesn't work. Those who rely on Witte to attack choice either have not read his research or are intentionally misleading their audience.

With respect to test scores, two independent scholarly studies find more positive results than Witte. A Princeton University economist, writing in Harvard's *Quarterly Journal of Economics*, says that "... being selected to participate in the choice program appears to have increased the math achievement of low-income, minority students by 1.5 to 2.3 percentile points **per year** (emphasis added)."[15]

A separate study, by scholars at Harvard University and the University of Texas-Austin, found even more positive results. Released in 1998 as part of a book issued by The Brookings Institution, the findings were recently published by Corwin Press in *Education and Urban Society*.[16] The authors found statistically significant gains in math of 6.8 percentile points and reading of 4.9 points for students in the choice program three and four years.

Former MPS Superintendent Howard Fuller, now a Distinguished Professor of Education at Marquette University, believes the gains described by Witte, Rouse, and Green, et al., epitomize the kind of educational reform that has been so elusive in urban public schools. He says he would have been elated to get news of such results at MPS.[17]

Undeniably, then, school choice in Milwaukee offers opportunities to children not succeeding in public schools. In recent months, Milwaukeeans have witnessed another dramatic event that has the potential of improving public school results. Under the direction of a newly elected MPS School Board majority that favors parent options, the public schools have begun to respond to the challenges of the school choice program with positive steps.

Last April, voters elected a slate of five reform candidates to the nine-member MPS board. The result was a majority of board members who vigorously support public schools and welcome the competition offered by the school choice program.

In successive months, the board has chosen a new superintendent, Spence Korte. Korte, a former MPS principal who has long fought for more school autonomy, immediately put together a new management team and has begun to implement the new board's agenda.

The board already has granted more independence to some MPS schools by awarding them charters, a move fiercely resisted by former boards. Observers expect the board to award more charters, to contract for more educational services, and to seek changes in the teachers' union contract to increase school autonomy and accountability.

Notably, the new board works closely with the school choice coalition not just to protect the program from excessive regulation but to gain statutory changes that give MPS more freedom to innovate.

While it is too early to point to academic achievement that results from these changes, there is little doubt that many in Milwaukee see the prospect of improved education — public and private — so vital to the well-being of the city and its surroundings.

Origins

Milwaukee's choice movement began stirring about twenty years ago, fueled by low academic achievement among minority students and a busing program that sent black children long distances from home. In 1984-85, a task force appointed by Wisconsin's Democratic Governor and its elected Superintendent of Public Instruction studied achievement in Milwaukee area public schools. It found an "unacceptable disparity in educational opportunity and achievement between poor and minority children...and non-poor and white children..."[18] The task force discovered that for several years Milwaukee Public Schools (MPS) had overstated academic achievement by classifying students as "at or above average" even if they scored substantially below the 50th percentile on achievement tests.

Such findings began to change the public perception of MPS performance. Other reports in the 1980s reinforced an emerging view that mandatory busing and "magnet schools" had left too many low-income, minority students behind.[19] Four years after the 1985 task force report, a Wisconsin Policy Research Institute report (see Note 19) said the academic performance of black MPS high school students remained low. In 1987-88, it found that:

- Grade point averages were below 1.6 on a 4.0 scale at the eleven MPS high schools attended by most black students.
- Four of five black high MPS school students scored below average on national test scores.
- Course failure rates ranged from 26% to 43%.

These and similar data validated the persistence and significance of the academic achievement problem and helped spur enactment in 1990 of the original MPCP. Sponsored by Democratic State Representative Annette "Polly" Williams and Republican Governor Tommy Thompson, the intent of the program was to foster more educational options for poor parents, better achievement for their children, and improved performance in MPS.

A limited program

The original 1990 law limited participation to non-sectarian schools and capped enrollment at only 1% — slightly less than 1,000 students — of MPS enrollment.[20] Choice opponents extracted these and other constraints during legislative bargaining.

A coalition for change

During Wisconsin's 1994 elections, a bipartisan coalition of parents, employers, and civic leaders urged candidates to expand the MPCP. They said more students should be allowed to participate and that parents should be able to choose not just non-sectarian but religious private schools as well. The coalition included:

- Parents for School Choice, an organization of low-income Milwaukee parents. A survey of black Milwaukeeans showed 71% supported the right to choose religious as well as non-sectarian schools.[21]
- The Metropolitan Milwaukee Association of Commerce (MMAC), a business organization of about 2,500 employers. A survey of business leaders found that 76% favored choice.[22]
- Democratic Mayor John Norquist, who believes that school choice leads to the high quality education critical to the life of a city.
- Business and civic leaders, who had founded a private scholarship program called PAVE (Partners Advancing Values in Education). PAVE became the largest program of its kind in the United States, providing a critical bridge of support for low-income students while opponents tried to kill choice in court (See Figure 2).
- Former MPS Superintendent Fuller.[23]
- Other community activists such as John Gardner, a former labor organizer who subsequently won a seat on the MPS board.

The rationale for an expanded program

A decade after the 1985 task force report, *The Milwaukee Journal Sentinel* said MPS remained a system where the "status quo, not kids, comes first."[24] It said "the district's distressing overall performance" was evident from an overall high school grade point average of 1.64 and a large "disparity in academic performance between white and black students..."

Support for choice in the business community grew, as employers faced difficulty hiring workers with basic skills and work habits. While surveys identified thousands of available jobs and a similar number of unemployed persons seeking work, employers said many applicants were not qualified.[25] In 1994, the MMAC made enactment of school choice its top legislative priority.

The expanded MPCP

In response to these concerns, Governor Thompson in 1995 proposed a major expansion of school choice. He proposed that all low income children in MPS — then about 64,000 — be allowed to participate and to choose sectarian as well as non-sectarian schools.

The legislature passed many elements of Thompson's plan, capping participation at about 15,000 students. On July 26, 1995, Thompson signed the expanded program into law.

Within weeks, teacher unions, the American Civil Liberties Union (ACLU), and others sued to block the program. Just before the 1995-96 school year, Wisconsin's Supreme Court enjoined the expanded program. After nearly three years of legal proceedings, the Court's June 10, 1998 decision sustained all aspects of the 1995 expansion.[26]

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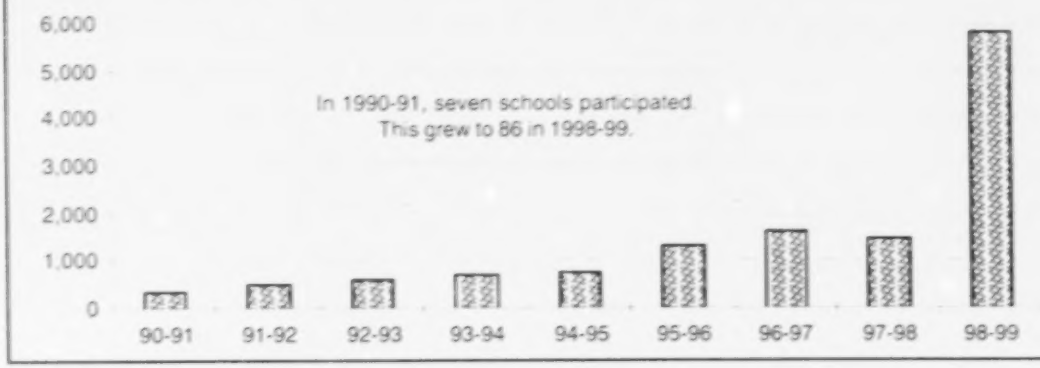
Program participation

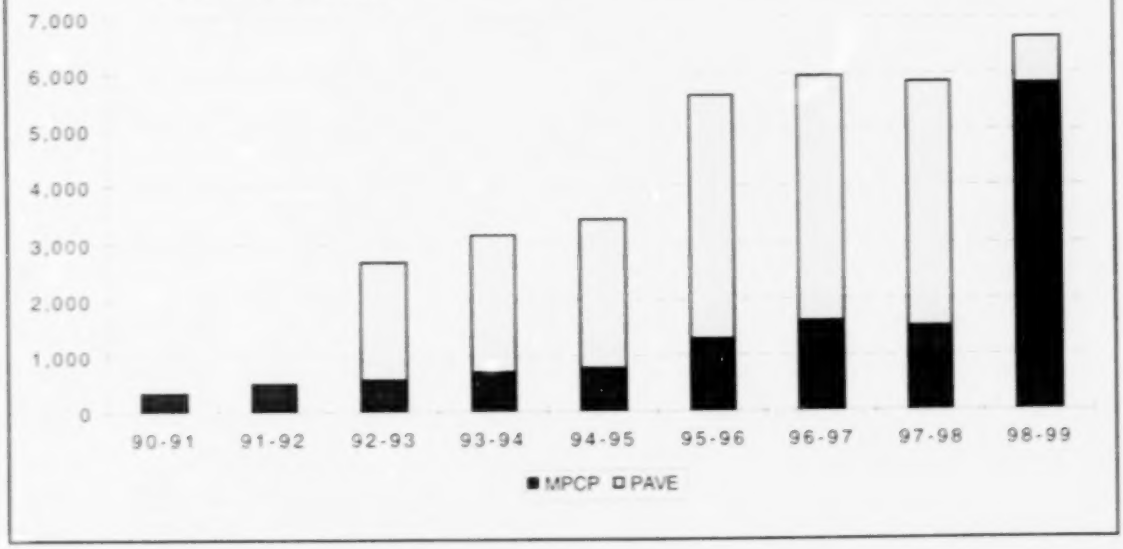
Student participation grew from 337 to 5,830 during the 1990s. As a result, the number choice students has grown to equal 6% of the fulltime MPS enrollment, compared to a minuscule 0.37% in 1991.

FIGURE 1 MPCP STUDENT MEMBERSHIP, 1990-91 TO 1998-99 [27]



But for the statutory limitations of the early 1990s and the 1995-98 Supreme Court injunction, participation would have grown faster. As Figure 2 shows, most low-income families seeking choice used the privately financed PAVE program for several years.[28]

FIGURE 2 LOW-INCOME MILWAUKEE STUDENTS USING K-12 PRIVATE SCHOOL CHOICE PROGRAMS, 1990-91 TO 1998-99.



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Section Two: Regulation of the MPCP

Efforts to regulate Milwaukee's private choice schools have been an important issue since the program's inception. The prospect of excessive red tape has threatened its success on several occasions.

For some conservative critics, the regulatory battle is all but lost. They find provisions in current law both unacceptable and a sign of adverse future developments. Three examples demonstrate their concerns: 1) private schools must admit choice students randomly; 2) schools may not require parents to join in fundraising activities; and 3) choice students may opt out of religious activities.

Teachers' unions, state education regulators, and other choice opponents see a different picture. To them, choice schools are woefully unregulated. They complain that choice "schools don't have to be accountable to the public, unlike public schools."[29] They want more legislation and more administrative rules to, in their terminology, level the playing field.

How do these differing perspectives square with the program's day-to-day reality? What laws and rules has the Legislature authorized?[30] Are they excessive, inadequate, or reasonable?

Regulation of private choice schools

Basically, the Wisconsin statutes apply two sets of standards to private choice schools.

Private choice schools are covered by any Wisconsin law that affects "private schools."[31] For example, all private schools must provide an "educational program" with at least 875 hours of annual instruction in a "sequentially progressive curriculum of fundamental instruction in reading, language arts, mathematics, social studies, science and health." Portions of the state's compulsory attendance law also apply to private schools.

The Legislature has specified other rules that apply only to private schools that participate in the MPCP. These schools must:

- Comply with non-discrimination provisions of the Civil Rights Act of 1964.[32]
- Admit eligible students on a random basis.
- Comply with health and safety codes that apply to public schools.
- Document for DPI that they have met certain academic criteria defined in the statutes.
- Conform to uniform financial accounting standards established by DPI.
- Submit an annual independent financial audit to DPI.
- Allow students to opt out of religious activity.

Taken together, laws affecting private choice schools comprise about two to three pages of statutory language, while the program's administrative rules add another five pages. In contrast, Wisconsin laws governing public schools exceed 100 pages,[33] exclusive of hundreds of pages of administrative rules and complex labor agreements.

Thus, while private schools that participate in the MPCP are more closely regulated than other private schools, the state's oversight does not remotely resemble its governance of public schools. From the standpoint of public policy, constitutional soundness, and legislative intent, this is a logical outcome.

That, at least, is how Wisconsin's Supreme Court sees it. In upholding the choice law, the Court has twice responded to the complaint of choice opponents that the program does not hold choice schools sufficiently accountable. As the ultimate Wisconsin arbiter in these matters, the Court has endorsed the adequacy of current law and clearly cautioned those who propose more rules and regulations.

Thus, Wisconsin's highest court twice has rejected claims that choice schools are underregulated or that they are "public schools." Further, the Court expressly cautioned against "excessive entanglement."

This has not dissuaded opponents of Milwaukee's choice program. They continue to propose layers of new regulation, viewing that approach as the only remaining way to overcome legislative and judicial defeats.

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TABLE 1 WISCONSIN SUPREME COURT VIEWS ON REGULATION OF CHOICE SCHOOLS [34]

Issue	Wisconsin Supreme Court Ruling
Adequacy of existing regulation	Existing statutory provisions provide "more than sufficient control and accountability....to ensure that the program serves the public purpose to which it is directed."
Importance of parent choice	Choice schools "are also subject to the additional checks inherent in the notion of school choice." Citing its 1992 decision upholding the original choice law, the Court said that "[c]ontrol is also fashioned...in the form of parental choice...If the private school does not meet the parents' expectations, the parents may remove the child from the school and go elsewhere."
Need to avoid "excessive entanglement"	The Legislature and Department of Public Instruction "need not, and in fact [are] not given the authority to impose a 'comprehensive, discriminating, and continuing state surveillance' over the participating" choice schools." To do so, the Court said, could "result in an excessive governmental entanglement with religion" that is not constitutionally permitted.
Are choice schools "public schools"?	While choice opponents said that private schools in the MPCP will become "public schools" because they are "supported by public taxation," the 1998 Court said this argument had been "squarely rejected" in its 1992 decision. The 1998 decision said that the choice law "expressly refers to participating schools as 'private schools'" and that elsewhere the law clearly defines what a private school is. The Court concluded by "apply[ing] the same reasoning" as it had in 1992: "the mere appropriation of public monies to a private school does not transform that school" into a public school.

SECTION THREE: A HISTORY OF REGULATORY THREATS

Ninety-nine private schools have applied to participate in the MPCP in the 1999-2000 school year. Enrollment could reach 8,000, larger than the student bodies of about 300 Wisconsin public school districts.

This is a major change from the program's earlier years. In 1995, twelve schools and 802 students took part. In 1991, when only 341 students enrolled at seven schools, a DPI official said the "whole thing hasn't amounted to a good-sized flea on the tail of a dog."

The recent dramatic growth was by no means assured. More than once, the prospect of excessive regulation has put the program at risk. This climate of regulatory uncertainty has prompted anxiety among participating schools and caused a handful of others to watch and wait. Opponents keep the pot bubbling with a continuing effort to add rules. The American Federation of Teachers explains the strategy (emphasis added) as follows:

> "[A] regulated voucher system...would erode the cherished autonomy and independence of private and religious schools [and] **discourage most private schools from participating**."[35]

Table 2 illustrates the kind of regulated school choice program opponents envision. It compares current law with a partial list of requirements recommended by various choice opponents.

Opponents know that added requirements of the kind described in Table 2 could do more than "erode" the independence of private schools; they could jeopardize the program's legal status. As shown in Table 1, Wisconsin's Supreme Court expressly warned that a "comprehensive, discriminating, and continuing state surveillance" of religious schools would be unconstitutional.

TABLE 2 EXISTING REGULATIONS AND A PARTIAL LIST OF PROPOSALS TO REGULATE MILWAUKEE'S PRIVATE CHOICE SCHOOLS.

Current Regulations Affecting Choice Schools	Additional Proposed Laws and Regulations
Choice schools must:	Would mandate that choice schools:
• Follow laws affecting all private schools in Wisconsin.	• Have a "formal governance structure" and bylaws; • Have staff and parent complaint procedures; • Hire only state-certified teachers; • Follow open record and open meeting laws.
Choice schools also must :	Would mandate that:
• Follow accounting standards established by DPI; • Submit an independent financial audit to DPI; and • Meet academic criteria defined in the statutes.	• DPI "measure...the adequacy and efficiency of educational programs" in private choice schools. • Choice students take all statewide achievement tests. • Choice schools administer the state's high school graduation test. • Choice schools issue reports on test scores, graduation rates, suspensions, expulsions, student body makeup, and payroll.
Choice schools also must:	Would mandate that choice schools comply with:
• Admit eligible students on a random basis; • Allow students to "opt-out" of religious activity; • Follow non-discrimination requirements of the Civil Rights Act of 1964; and • Comply with health & safety codes that apply to public schools.	• Wisconsin Pupil Non-Discrimination Act; • Title IX, Education Amendments of 1972; • Age Discrimination Act of 1975; • Section 504, Rehabilitation Act of 1973; • Family Education Rights and Privacy Act; • Drug-Free School and Communities Act of 1986; and • Education for All Handicapped Children Act.

The earliest threat

After the 1990 law was enacted, Herbert Grover, then Superintendent of the Department of Public Instruction (DPI), said choice schools must follow what a state trial court judge called "an amazing array of state and federal laws, constitutional provisions and rules."[36]

Even individual public schools did not have to comply with the most onerous item on Grover's list — full compliance by each private school with all federal requirements involving children with special needs. This alone would have ended the choice program. After choice schools appealed, the state trial court judge disallowed this requirement. Her opinion noted that Grover "has been extremely vocal in his opposition" to choice and "does not wish the law well."

Still, this judge gave Grover an important victory. She said DPI was permitted — though not required — to impose regulations beyond those approved by the legislature. In the process, she accepted Grover's rationale that choice schools were "supported by public taxation" and therefore were subject to some DPI oversight.

However, three subsequent developments have limited substantially the potential for open-ended and possibly unconstitutional regulation.

- Wisconsin's Supreme Court twice has rejected DPI's interpretation that choice schools are public schools.[37]
- DPI did not actively enforce the various additional rules allowed by the Dane County judge, according to administrators at several choice schools.[38]
- In mid-1998, the added rules were removed from the application form that choice schools must submit to DPI. Section Four describes how that action occurred.

Additional regulatory proposals

Grover's 1990 move to enlarge the program's regulatory scope was followed by other efforts. Notably, several required more of private schools in the MPCP than of public schools.

- John Witte, a University of Wisconsin professor chosen by Superintendent Grover to evaluate the choice program, proposed "very simple regulations requiring a formal governance structure, financial reporting, and further accountability in terms of outcomes..."[39] He said that private choice schools should follow open meeting laws and "all current and future state outcome requirements, including statewide tests, dropout reporting, and a school report card..."

  As with Grover's proposal for students with special needs, Witte's proposals went beyond what is required of all public schools. For example, he said choice schools should be "forbidden from using achievement or behavioral records or information in making their enrollment decision," a practice not required of several MPS schools.[40]
- John Benson, elected in 1993 as DPI Superintendent, shared Grover's antipathy to choice. Benson called the program "lunacy" in a 1995 speech. After the 1998 court decision, he said the "likes of Timothy McVeigh" might start schools in Milwaukee. Citing Witte's reports, Benson said the choice program "suffers from severe lack of oversight." He complained that choice schools are "exempt from most state education laws and requirements" and called for "assurances that the private schools are viable, both administratively and financially." He said this could be achieved by "[r]equiring a more formal governance structure for the schools, authorizing more state financial oversight, and requiring that 'choice' students take all statewide assessments [given] to public school students..."[41]
- In 1996, Benson found an unlikely ally. State Representative Polly Williams separated herself from the Milwaukee choice coalition to sponsor Assembly Bill 1008. It directed DPI to "[d]evelop an educational assessment program to measure objectively the adequacy and efficiency of educational programs offered by public schools...and...private schools participating" in the MPCP. It also required that each school have "a formally constituted governing board, a financial statement approved by the governing board, a staff grievance procedure, a parent complaint procedure and bylaws."[42] Owing in part to Williams' sponsorship, the bill passed the State Assembly by a wide margin. It failed to pass the State Senate.
- DPI subsequently asked Governor Thompson to include measures similar to those in AB 1008 in the 1997-99 biennial budget. Governor Thompson did not include them in his budget proposal and separate legislation incorporating them was not introduced.[43]

Section Four: The Near Death of the MPCP

Efforts to increase the regulation of choice schools subsided for a time after the consideration of AB 1008. This lull abruptly ended when the Wisconsin Supreme Court upheld the expanded school choice program in June, 1998, thus permitting religious schools to participate.

In fact, the very real possibility existed that the expansion would not occur. Immediately after the June 10 ruling, DPI and others reasserted their concerns that private choice schools are inadequately regulated. In the days and weeks following the court decision, administrators at newly eligible religious schools watched these developments:

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- A page one story in *The Wisconsin State Journal*, the state's second largest paper, carried this headline:

Few Rules for Church Schools

They are unregulated and unaccountable, DPI says

The story contained dire warnings from Brad Adams, a DPI employee responsible for neutral administration of the choice program. He was reported to have predicted a "decline in education," explaining that he was "nervous" because "private schools are virtually unregulated...You could have a convicted felon [teaching]. They could be high school dropouts."

- A week later, *The Boston Globe* said Adams "predicts [Wisconsin] taxpayers won't tolerate this 'tremendous lack of oversight... Not today, but maybe five years from today, religious schools may be very sorry they got into this. The state will demand accountability, and the result will be two public school systems.'"
- The Public Policy Forum, a Milwaukee research group, asked: "Does it make sense [for] traditional public schools [to] follow one set of accountability guidelines while private schools receiving public funding follow a different set...?" The Forum concluded that "requiring one set of guidelines for traditional public schools and another for private choice schools creates an unequal playing field."[44]

  Alan Brown, then-Superintendent of MPS, told *Investor's Business Daily* that choice schools "are going to look just like public schools" as a result of new rules that he hoped would be added.

- A front page article in the *Journal Sentinel* carried this headline:

DPI bans single-sex schools in choice plan

The article said single-sex schools "violate sex discrimination rules" and that DPI and other choice "critics...say that if private schools are going to get public money, they are going to have to follow the same rules as public schools."

DPI seeks compliance with added rules

As religious schools pondered these expressions of concern, DPI sent them an even more troubling message. School administrators were told that they must "guarantee compliance" with rules similar to those issued in 1990 by then Superintendent Grover.[45]

Grover's rationale, which the Wisconsin Supreme Court has twice rejected, was that choice schools were subject to regulation as "public schools." In fact, the Supreme Court had moved in the opposite direction, warning that rules governing private choice schools must not "result in an excessive governmental entanglement with religion."

The court's decisions notwithstanding, DPI Superintendent Benson maintained that the 1990 lower court ruling required him to impose the extra rules. He did so despite the 1992 and 1998 decisions of the Supreme Court and despite the fact that the legislature had included none of the rules in the original or expanded program.

Benson's stated requirements and the comments of his designee, Brad Adams, fueled concerns among private schools, most of which had private scholarship students in their student bodies and most of whom had been fully prepared to participate in the MPCP.

Their concerns were compounded when school administrators learned that the annotated version of DPI's extra regulations totaled 315 pages. Even DPI employees appeared not to understand their content.

By mid-July, one month after the court ruling, most newly eligible schools had refrained from joining the program. Thus, a month after the "landmark" Court decision, with the 1998-99 school year a few weeks away, DPI's proposed rules now served as a de facto injunction on the expanded program.

How school choice supporters kept the program alive

School choice supporters fought the rules by enlisting the Governor and supportive legislators, analyzing and explaining the problems with DPI's actions, and providing a strong demonstration of support for action to block the imposition of these rules. Their actions exemplify the response of the coalition to other regulatory threats identified in this report.

Supporters and Governor Thompson promptly urged legislators to remove the extra regulations. As a first step in considering that request, the Legislature's Joint Committee for the Review of Administrative Rules scheduled a July 30 hearing.

Table 3 summarizes various actions taken by coalition members.

TABLE 3 EFFORTS TO LIMIT DPI REGULATION OF MILWAUKEE'S CHOICE PROGRAM.

Coalition Member(s)	Action
• PAVE, a Milwaukee organization that provides private scholarships	Several Milwaukee lawyers[46] prepared for PAVE a legal analysis arguing that DPI had exceeded its authority. The Institute for Justice (IJ), part of the team that successfully defended choice in the Wisconsin Supreme Court, provided additional legal support.
• The Institute for Justice	IJ assessed the legality of proposed regulations and found that many lacked any statutory basis under federal or state law.
• Milwaukee Public Schools Directors John Gardner, Bruce Thompson, and Warren Braun	Gardner, Thompson, and Braun told legislators that the rules proposed by DPI conflict "with the Legislature's intent in creating the choice program: to let low-income...parents voluntarily enroll their children, as private school students, in private schools."
• Professor Fuller	Professor Fuller provided written background information in response to several recurring questions that many legislators asked.
• Archdiocese of Milwaukee • Lutheran Church-Missouri Synod	Representatives of these organizations (John Norris, Roger Laesch, and Sharon Schmeling) addressed legislators on a variety of issues and misconceptions that had arisen during discussion of the DPI rules.
• Wisconsin Association of Non-Public Schools • Representatives of individual schools	Principals and administrators from Messmer High School, St. Joan Antida High School, Pius High School, and Milwaukee's Lutheran Special School also presented written and verbal testimony.
• Parents • Employers • Others	Additional written and verbal testimony was provided by: Zakiya Courtney (Parents for School Choice); Val Johnson, a parent at St. Joan Antida High School; Tim Sheehy (Metropolitan Milwaukee Association of Commerce); and Dan Grego (Transcenter for Youth).

In the face of choice coalition pressure and legislative leadership, DPI retreated. By the time of the July 30 hearing, several legislators developed a proposal accepted by DPI.[47]

Under the plan, DPI:

- Removed the requirement that schools comply with the disputed rules;
- Required schools to acknowledge that DPI still believes that the rules apply;[48] and
- Withdrew its objection to the participation of single-sex schools.

This agreement lessened the "potential for confrontation between state regulators and private schools," according to the *Milwaukee Journal Sentinel*.[49]

Soon thereafter, DPI issued new, unobjectionable program rules. By mid-August, dozens of religious schools had joined the program. When classes began in late summer, Milwaukee's program had grown from 23 schools and 1,501 students in 1997-98 to 86 schools and 5,830 students.

In summary, for several weeks after the June 10 court decision, the expanded Milwaukee program was at a regulatory crossroads. It was not until the July 30 compromise, made possible by choice allies and supportive elected officials, that widespread implementation of the Court decision became feasible. The intervening events show the serious nature of the regulatory threat. They also show that a sustained and coordinated response by choice allies can resist that threat.

Section Five: Other Dimensions of the Regulatory Threat

Regulation has always been part of the arsenal of school choice opponents. In Wisconsin, in the wake of legislative and legal defeats, it has become their remaining hope.

The July 30 agreement describes just one of the efforts to hamstring the program. School choice supporters, in fact, have faced an ongoing campaign to add more rules and regulations. This campaign has taken several forms.

Factual misinformation

The spread of misinformation about choice schools is intended to cast the program in a negative light and increase support for more regulation. This strategy, particularly outside Wisconsin, assumes most reporters won't check the accuracy of these assertions. Too frequently, this assumption is correct.

Groups using this approach include the American Civil Liberties Union (ACLU) and People for the American Way (PFAW). Some Wisconsin examples follow.

ACLU. As the 1998-99 school year began, the ACLU held a press conference in Milwaukee to assert that:

- "[P]ro-voucher columnist Pat Buchanan has identified racist attitudes among some long-time religious school parents...[W]e need to be on guard against these attitudes."
- Private schools in the choice program want to "avoid telling parents, taxpayers and advocates if the school will comply with basic civil rights law."
- Choice parents should be wary, lest they unknowingly "sign their child up in a school that tolerates sex harassment or other forms of discrimination."[50]

These statements reflect a breathtaking disregard for the facts. Here, for example, the ACLU raised the specter of discrimination, even though: 1) school choice in Milwaukee has increased racial balance in private schools; 2) private choice schools are more integrated than MPS schools;[51] and 3) choice schools must admit any student eligible using a process of random selection.

PFAW. PFAW also disregards the facts. The group has conducted a year-long disinformation campaign against Milwaukee's choice program in Wisconsin and elsewhere, making statements that are either grossly misleading or flatly contradicted by all published evidence about the Milwaukee program. For example:

- **PFAW assertion**. In October, 1998, a PFAW officer said that at many Milwaukee choice schools the program does "not even cover the full cost of tuition. Parents of low-income children often can't afford to make up the difference."[52]

  Fact. The law clearly states that eligible students "may attend, at no charge," any eligible private school. PFAW cites no example of this law having been violated.

- **PFAW assertion**. In December, 1998, attempting to justify more regulation of choice schools, the PFAW president claimed that these schools "pick and choose children who are easiest to teach."[53]

  Fact. The claim that private schools pick the most able choice students is simply untrue. University of Wisconsin researcher John Witte found that the low-income *"...choice students...enter very near the bottom in terms of academic achievement."* (Witte's emphasis).[54]

- **PFAW assertion.** In February, 1999, PFAW claimed that as many as 35 choice "schools have ignored the requirement that they admit voucher students on a nondiscriminatory basis."[55]

  Fact. While the PFAW claim suggests that dozens or even hundreds of students were unlawfully excluded, the actual number is, apparently, zero. PFAW has not identified a single student who was improperly denied admission to choice schools.

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The facts are immaterial to groups such as the ACLU or PFAW. One can only conclude that their main goal is to put damaging information into the public arena, not only to win in the court of public opinion but to pave the way for more restricted school choice programs.

Calls for more regulation

Legislators and others are besieged regularly with calls for more regulation. While some proposals are undisguised efforts to harm school choice, others are dressed up as "accountability" measures, supposedly needed to ensure proper use of public dollars.

As already noted, the second-largest national union, the AFT, issued an extensive report identifying added regulation as a way to discourage private schools from joining choice programs (see Note 7).

Separately, the largest teachers' union, the NEA, provides substantial support to PFAW.[56] The NEA's Wisconsin and Milwaukee affiliates co-sponsored a December, 1998 event where PFAW advocated extensive additional regulation and produced an agenda of specific proposals likely to limit private school participation and thus shrink parent options. (see Note 27).

The siren song of "accountability"

Perhaps the most subtle regulatory threat is the call for accountability. School choice supporters believe that the very ability of parents to leave schools imposes accountability; they may accept some modest additional measures as reasonable. School choice opponents and other perhaps more well-intended persons believe that government regulation imposes accountability and that parent choice is by definition insufficient.

Unfortunately, the fundamental difference in those beliefs tends to be blurred in public debate, where any proposal that is said to produce more accountability sounds like a good thing. This is the arena where the actions of persons who are probably well-intended play into the hands of school choice opponents.

The work of the Public Policy Forum demonstrates this dynamic. After the 1995 enactment of the expanded choice program, the Forum's executive director called for "...a code of specific accountability standards [for choice schools] suitable for legislative enactment..." A subsequent Forum report called for "...consensus on a method to hold private choice schools accountable to the children that attend them and to the public that supports them."[57] This report recommended an expansion of regulatory provisions enacted by the Legislature and sustained by the Wisconsin Supreme Court. Specifically it proposed that:

- Private choice schools be required to administer standardized tests used in the state's public schools.
- Private choice schools disclose information about their curriculum, methods of teaching, mission and philosophy, qualifications of teachers and administrators, and governing structure.
- Private choice schools disclose "how money is budgeted and spent."
- Creation of a new "public board...to gather the required information...and make it...public."

The subsequent June, 1998, court decision did not sway the Forum, which opined that different regulation of choice and public schools "creates an unequal playing field."

An academic advisor who observed the Forum's research said: "As [its] reports were being drafted it became clear that the dominant people on the study...had adopted a clear position in favor of using the same oversight processes for [private] schools of choice as for conventional public schools."[58]

The Forum's work has provided ammunition for opponents who expressly want to use regulation to kill school choice. The AFT call for more regulation cites the Forum to support its conclusion that "[p]rivate schools that accept public dollars must be held accountable for the use of those dollars."

The administrative state

Perhaps the most consistent and most real regulatory threat has come from the Department of Public Instruction (DPI) as a result of its power to issue administrative rules and directives outside the rulemaking process.

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Rulemaking is one of the least understood, most complex functions of the administrative branch of state government. The rulemaking process, once begun, moves forward on automatic pilot and can be halted only by the intervention of a legislative committee. Once adopted, administrative rules have the force of law.

Some attempts to regulate the private schools in the choice program in Wisconsin, however, have simply taken the form of directives issued to schools without public discussion or debate.

In February, 1999, for example, DPI resurrected several issues supposedly settled the previous summer. Specifically, the agency told private choice schools that a majority of them must abide by rules that had been suspended under a legislative agreement only eight months earlier.[59] DPI's new rationale was that private choice schools with students in the federal Title 1 program were "recipients of federal financial assistance." According to DPI, this meant that the schools had to comply with:

- Title IX of the Education Amendments of 1972;
- The Age Discrimination Act of 1975;
- Section 504 of the Rehabilitation Act of 1973; and
- The Family Education Rights and Privacy Act.

The Institute for Justice (IJ) promptly pointed out to DPI that the federal government has consistently taken the position that private schools are not recipients of federal funds by virtue of enrolling Title 1 students. In a letter to DPI, IJ explained its interpretation of the issues and posed several clarifying questions.

What is DPI's response? What is its competing legal analysis? No one knows. DPI sent only a brief letter to IJ that included the statement that the "....department appreciates your views and they will be taken into consideration in next year's documentation."

1999 Assembly Bill 342

Assembly Bill 342, co-sponsored by legislative opponents of the choice program, would apply the Wisconsin Pupil Nondiscrimination Act to private choice schools.[60]

While the bill sounds innocuous, it could lead to another legal challenge. The Institute for Justice told sponsors that the bill would reduce options now available to low-income Milwaukee parents and involve state government in burdensome, intrusive, and constitutionally troublesome regulation of private schools.

The school choice coalition has opposed AB 342, making the following points:[61]

- The ban on discrimination involving sex "would exclude several [single-sex] high schools and at least one middle school now participating in the program."
- The bill puts the state in a constitutionally untenable oversight position with respect to student participation in religious activity by: 1) requiring religious schools to develop and submit to DPI "written policies and procedures [on student participation] in any curricular, extracurricular, pupils services, recreational or other program or activity..." and 2) giving DPI investigative and enforcement authority and requiring that it report to the legislature on whether religious schools have complied with new policies and procedures required of them.
- Under existing law, private choice schools must accept any eligible student. This is a more restrictive approach than MPS uses at many schools, where academic and other screening criteria are common.

Those facts notwithstanding, those who oppose AB 342 can expect the ACLU and PFAW to portray them as to favoring discrimination.

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The road ahead

The examples in this section demonstrate the persistence of choice opponents in seeking to expand the regulation of choice schools.

As this report is written, the outcome of several efforts is uncertain. For example:

- DPI still has not explained its basis for believing that choice schools with students in the Title 1 program are recipients of federal aid. The February, 1999, DPI letter is a reminder that DPI believes that school choice is insufficiently regulated and may be planning to use the Title 1 issue to enforce various additional rules.
- The legislative prospects of AB 342 are unclear. Almost certainly, ACLU and PFAW will continue to portray private choice schools as discriminatory.
- PFAW and the Milwaukee teachers' union continue to search for examples of what happens "When 'Choice' Does Not Work Out." [62] At PFAW's December, 1998 anti-choice conference in Milwaukee, lawyers for PFAW and the union said they hoped to identify instances where a student's rights were violated so that legal action could be initiated.

Each of these issues requires constant vigilance by the school choice coalition.

Section Six: Lessons From Wisconsin

Wisconsin's experience offers five key lessons for school choice supporters.

Lesson one: Expect opponents of school choice to understand the power of the regulatory threat and to use it to impede school choice at every stage of the battle.

Too much regulation will prevent private school participation in publicly financed school choice programs, and opponents know it. Well-organized and well-financed, opponents propose more regulation not to improve the program or resolve real problems, but to end or contain it. The past decade of experience in Wisconsin shows that opponents will seek to regulate such programs with fierce persistence.

Lesson two: Counter with a strong, vigilant, and unified school choice coalition devoted to blocking efforts to strangle school choice.

School choice supporters must view themselves as an interest group with critical interests to protect. No less than the teachers' unions, they must organize, monitor legislative and administrative developments, seek sound legal advice, and respond aggressively to threats to their interests. Most important, they must unite to fight the real opposition.

In Milwaukee, such an approach has produced encouraging results. The school choice coalition has forestalled each attempt to regulate private schools. In the process, it has grown stronger and more vigorous.

Lesson three: Beware proposals ostensibly designed to improve accountability.

School choice supporters must define the terms of this debate. School choice produces accountability by allowing parents to take children out of schools that don't serve the child.

Despite heavy regulation, most public schools, especially urban districts, are not accountable for what counts most — academic performance.

Nonetheless, the promise of accountability through government regulation is seductive, the wolf in sheep's clothing that lures even some supporters. But even experienced public school officials know that rules mean little. The testimony of Allen Nuhlicek, a former MPS Principal then at the private Bruce Guadalupe School, on new school choice rules proposed in the mid-1990s frames the issue:

> "I fear this is well-meaning but will be only the first wave of regulations. [My experience as an MPS principal] causes me to ask: What relationship is there between rules and regulations and achievement? To follow the regulatory model is an alluring trap...I have seen [public school staff] tied up for weeks [trying to implement well-intended rules]. If you legislate away all problems you will legislate away all success."

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Lesson four: Fight misinformation aggressively.

Some opponents of school choice use a staggering array of misinformation to influence legislators, the courts, and public opinion. Their strategic goal is to create a climate where it is easier to defeat legislation, block school choice in the courts, and, in the case of Wisconsin, to regulate the existing program.

School choice supporters must respond with accurate, credible information no matter how many times such a response is required.

Lesson five: Support well-designed legislation.

School choice supporters can expect an onslaught of regulatory proposals during the legislative battle as opponents seek to diminish the impact of a bill. Experience in Wisconsin demonstrates that the effort to regulate the program will continue unabated after enactment.

Given this, sound bill design becomes absolutely critical. Proposals that actually will work are likely to be short and simple, defining eligible students and schools, providing for the most straightforward financing possible where dollars follow students, and defining a simple way to administer the program. Efforts to resolve too many possible problems with statutory language tends to give opponents more opportunity to complicate the program.

Conclusion

The regulatory threat is real, but experience to date suggests that a vigorous constituency can fend off unnecessary regulation. School choice supporters now must demonstrate that they can sustain these early results.

Notes

1. "Fourth Year Report: Milwaukee Parental Choice Program," John F. Witte, et al., Department of Political Science and Robert M. La Follette Institute of Public Affairs, University of Wisconsin-Madison. December 1994.

2. "A Choice in the Matter," David Ruenzel, *Education Week*, September 27, 1995.

3. "Effectiveness of School Choice: The Milwaukee Experiment," Jay P. Greene, Paul E. Peterson, and Jiangtao Du, *Education and Urban Society*, February 1999.

   Private School Vouchers and Student Achievement: An Evaluation of the Milwaukee Parental Choice Program," Cecilia Elena Rouse, *Quarterly Journal of Economics*, May 1998.

4. "The Milwaukee Voucher Experiment," Witte, *Educational Research and Policy Analysis*, Winter 1998.

5. *Jackson v. Benson*, 578 N.W.2d 602 (Wis. 1998).

6. The U.S. Supreme Court let stand the Wisconsin decision, choosing not to hear an appeal by opponents of the ruling. In the year since the Wisconsin decision, related cases were decided in Arizona, Vermont, Maine, and Ohio. The Arizona and Ohio decisions were favorable to choice supporters. The Vermont and Maine rulings were not. Given the range of different rulings, legal observers expect that the U.S. Supreme Court to accept one or more of these cases on appeal.

7. "Vouchers and the Accountability Dilemma," from "AFT Voucher Homepage," at http://www.aft.org.

8. "Paying the Piper," by Joseph Loconte, *Policy Review*, February 1999.

9. "Vouchers and the Accountability Dilemma."

10. "The Dilemma of School Choice," by Stacy Mattingly, *Crisis*, March 1996.

11. "The Devil's Deal," by Ronald Trowbridge, *The National Review*, September 15, 1997.

12. "A Devil's Deal' — Why Conservatives Should Reject School Vouchers," by Robert Chase, September 1997, http://www.nea.org/society/bc/bc970914.html.

13. "Few Clear Lessons From Nation's First School-Choice Program," Tamar Lewin, *The New York Times*, March 27, 1999, and "Despite mixed record, vouchers gain momentum," Marjorie Coeyman, *The Christian Science Monitor*, March 30, 1999.

14. "The Milwaukee Voucher Experiment," Witte.

15. Cecilia Elena Rouse. Private School Vouchers and Student Achievement: An Evaluation of the Milwaukee Parental Choice Program. *Quarterly Journal of Economics*, May 1998, pp. 553-602.

16. Jay P. Greene, Paul E. Peterson, and Jiangtao Du. Effectiveness of School Choice: The Milwaukee Experiment. *Education and Urban Society*, February 1999, pp. 190-213.

17. "A Challenge to Education Reformers and the Media," Fuller, in a paper presented to the Northeast Education Forum conference, May 6-7, 1999.

18. *Better Public Schools*, Final Report of the Study Commission on the Quality of Education in Metropolitan Milwaukee Public Schools, October 1985.

19. "The Impact of the Milwaukee Public Schools System's Desegregation Plan on Black Students and the Black Community (1976-1982)," Howard Fuller, Ph.D., 1985 doctoral thesis;

    "School Desegregation Ten Years Later — Why It Failed," Bruce Murphy, Milwaukee Magazine, September 1986; and

    "An Evaluation of State-Financed School Integration in Metropolitan Milwaukee," George A. Mitchell, *Wisconsin Policy Research Institute Report*, Vol. 2, No. 5, June 1989.

20. MPS enrollment has averaged between about 90,000 and 100,000 students during the 1990s. In 1993, the Legislature increased the choice enrollment cap from 1% to 1.5%. Compared with small number eligible by virtue of the cap, about 64,000 Milwaukee children met the program's low-income eligibility guidelines. See "Expanded School Choice in Milwaukee," by Howard Fuller and Sammis White, Wisconsin Policy Research Institute Report, Vol. 8, No. 5, July 1995.

21. "Black Public Opinion in Milwaukee," Sammis B. White, *Wisconsin Policy Research Institute Report*, Vol. 8, No. 2, February 1995.

22. "Member Issue Survey," Metropolitan Milwaukee Association of Commerce, April, 1994.

23. Fuller joined the choice coalition after his 1995 resignation from MPS. At Marquette University, he founded and directs the Institute for the Transformation of Learning.

24. "Fixing MPS," *Milwaukee Journal Sentinel*, November 19 - 26, 1995.

25. In October, 1994, the University of Wisconsin-Milwaukee Education & Training Institute said employers were seeking almost 20,000 full-time workers and another 14,000 part-time workers. During the same month, the Institute quoted the Bureau of Labor Statistics as estimating that almost 31,000 persons were unemployed and seeking work. (Survey of Job Openings in the Milwaukee Metropolitan Area - Week of October 24, 1994)

26. The following table describes major provisions of the Milwaukee Parental Choice Program. Statutory provisions and administrative rules are in Section 119.23, *Wisconsin Statutes*, and Chapter PI 35, Department of Public Instruction, *Wisconsin Administrative Code*.

Residency	Residents of the City of Milwaukee.
Eligible students	In the prior school year, a student entering the program must have attended either: no school; an MPS school; or a private Milwaukee school in kindergarten through third grade.
Family income	Eligibility is limited to families with income at or below 175% of the federal poverty level (in 1999-2000, $24,290 for a family of three, increasing $4,935 for each added family member).
Number of participants	No more than 15% of school district membership in the Milwaukee Public Schools, or about 15,000 students.
Eligible schools	Private, K-12 schools in the City of Milwaukee.
Student selection	Participating schools must accept any eligible students. If applications exceed available space, the school must use a lottery.
Finance	The state pays private schools an amount equal to the state's per pupil aid to MPS OR the school's audited per pupil operating cost and debt service, whichever is less. In 1998-99, the maximum per pupil payment to private schools was $4,894. Under a pending proposal, future payments would be based on the 1998-99 amount, adjusted annually

27. Wisconsin Department of Public Instruction, http://www.dpi.state.wi.us/dpi/dfm/sms/histmem.html.

28. Following the June, 1998, Supreme Court decision, most PAVE students eligible for the MPCP transferred to the public program. PAVE no longer accepts new students, but it does provide scholarships for continuing students in its program that are not eligible for the MPCP.

29. "Real Accountability for Voucher Schools," legislative agenda of People for the American Way, described in a flyer issued in Milwaukee at a December 8, 1998, conference.

30. Three primary authorities govern the choice program: the adopted law (Section 119.23, *Wisconsin Statutes*); administrative rules promulgated by the Department of Public Instruction (Chapter PI 35, *Wisconsin Administrative Code*); and the Wisconsin Supreme Court's decision upholding the program's constitutionality (*Jackson v. Benson*, see Note 5).

31. See "Wisconsin Statutes Pertaining to the Educational Program in Private Schools," at http://www.dpi.state.wi.us.

32. The applicable provision states that "[n]o person...shall, on the ground of race, color, or national origin, be excluded from participating in, be denied the benefits of, or be subjected to discrimination under any program or activity..."

33. See Chapters 115 - 121, *Wisconsin Statutes* 1995-96, Volume 3, pp. 2448 - 2572.

34. *Jackson v. Benson* and *Davis v. Grover*, 166 Wis. 2d 501, 480 N.W.2d 460 (1992).

35. "Vouchers and the Accountability Dilemma."

36. This characterization came from former Dane County Judge Susan Steingass, whose August, 1990, opinion upheld the constitutionality of the original MPCP. Dane County Circuit Court, Decision and Order, Case No. 90 CV 2576.

37. *Davis v. Grover* and *Jackson v. Benson*.

38. Between 1990 and 1998, DPI required choice schools to comply with: the Wisconsin Pupil Nondiscrimination Act; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; Section 504 of the Rehabilitation Act of 1973; the Family Education Rights and Privacy Act; the Drug Free School and Communities Act of 1986; and "All federal and state constitutional guarantees protecting the rights and liberties of individuals including freedom of religion, expression, association, against unreasonable search and seizure, equal protection, and due process."

39. "Second Year Report — Milwaukee Parental Choice Program," Witte, et.al., December 1992.

40. DPI already interprets the choice law as preventing such screening of students. While screening is a common practice in MPS, choice opponents regularly claim that private schools in the Milwaukee program "skim" the best students from public schools.

41. 1996-97 Education Improvement Agenda, Wisconsin Department of Public Instruction, March 1996.

42. A few months before the introduction of AB 1008, the September 1995 issue of *Teacher Magazine* included an article on Milwaukee's choice program. Writer David Ruenzel asked Rep. Williams about choice critics who say that public schools are held "accountable in ways that private schools could never be." She responded: "What are the public schools accountable for? What good is all this talk of accountability if a child goes there for 12 years and then comes out unable to read and write? Why, with all these rules, requirements, and resources, is the product so inferior?"

43. In the 1997-99 legislation session, Rep. Williams sponsored AB 183, a measure also opposed by the school choice coalition. AB 183 would have barred religious schools from the program and reduced the maximum enrollment from 15% to 10% of MPS enrollment. The bill did not come to a vote. Rep. Williams told *The Madison Capital Times* that the coalition's opposition to AB 183 "...is about maintaining dominance of white people in controlling the institutions in our community."

44. "Public supports choice, but wants accountability," by Emily Van Dunk, *The Milwaukee Journal Sentinel*, June 21, 1998.

45. Specifically, to participate in the program schools were told they must follow: the Wisconsin Pupil Nondiscrimination Act; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; Section 504 of the Rehabilitation Act of 1973; the Family Education Rights and Privacy Act; the Drug Free School and Communities Act of 1986; and "All federal and state constitutional guarantees protecting the rights and liberties of individuals including freedom of religion, expression, association, against unreasonable search and seizure, equal protection, and due process."

    These requirements were part of a "Notice of Intent to Participate" form sent by DPI to private schools.

46. The attorneys, affiliated with the Milwaukee Lawyers Chapter of the Federalist Society for Law & Public Policy Studies, provided their services on a pro bono publico basis.

47. Senator Robert Welch and Representative Glenn Grothman, committee co-chairs, were supported in their efforts by Assembly Speaker Scott Jensen, Senator Alberta Darling, Senator Margaret Farrow, and Representative Antonio Riley.

48. Counsel for the schools say this acknowledgment has no legal weight.

49. "Single-sex schools OK in choice plan, DPI now says; Move appears to end confrontation between private schools, regulators," *The Milwaukee Journal Sentinel*, July 31, 1998.

50. "Choice School Stonewalling is Outrageous!" — statement issued by Chris Ahmuty, Executive Director, American Civil Liberties Union of Wisconsin, August 26, 1998, at the Milwaukee Branch Office of the NAACP.

51. "The Impact of School Choice on Racial Desegregation in Milwaukee," Fuller and Mitchell, Current Education Issues No. 99-4, Marquette University, Institute for the Transformation of Learning, June 1999. Fuller and Mitchell estimate that the expanded choice program has created about a 60%-40% white/non-white enrollment in private schools, compared to about 20%-80% in MPS. Twenty years after a 1976 federal desegregation order, Fuller and Mitchell cite MPS records as identifying 60 elementary and middle schools with an enrollment of more than 96% minority students.

52. Lisa Versaci, Florida Director of PFAW, in a statement issued during an October 22, 1998, news conference.

53. Carole Shields, national PFAW president, made this claim at a daylong Milwaukee conference on December 8, 1998. At the conference, PFAW distributed an extensive legislative agenda for additional regulation of choice schools, incorporating proposals similar to those identified in Table 2.

54. "Fourth Year Report: Milwaukee Parental Choice Program," Witte, et.al.

55. "Voucher Schools [Are] Violating Wisconsin Law on Student Admissions." PFAW news release, February 2, 1999.

56. The National Education Association (NEA) gave PFAW more than $400,000 between 1992 and 1996, according to Charlene Haar, president of the Education Policy Institute, Washington D.C., in Organization Trends, a publication of the Capital Research Center, September 1997.

57. "Choice School Accountability: A Consensus of Views in Ohio and Wisconsin," by Emily Van Dunk, David Meissner, Jeff Browne, *Public Policy Forum Report*, February 1998, Milwaukee.

58. Professor Paul Hill, Graduate School of Public Affairs, University of Washington. He expressed this view in a January 18, 1999, e-mail to Fuller and Mitchell. See "School Choice and Accountability: A Critique of the Public Policy Forum's Research," by Fuller and Mitchell, Continuing Education Issues No. 99-1, Marquette University, Institute for the Transformation of Learning.

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While the Forum disagrees with Fuller and Mitchell's contention that it advocates more regulation, the Forum's initial (1995-96) study proposal called for "a code of reasonable guidelines suitable for legislative consideration..." A second draft called for "potential measures of accountability...that could be fashioned into guidelines for possible legislation..." Later reports identified a goal of submitting "...recommendations for accountability guidelines to policy makers..."

A written rebuttal from the Forum to Fuller and Mitchell is part of their 1999 report, available by contacting The Institute for the Transformation of Learning, 414-288-5775.

59. February 8, 1999, DPI letter to choice school administrators.

60. Section 118.13(1m), *Wisconsin Statutes*, prohibits discrimination based on "sex, race, religion, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation or physical, mental, emotional or learning disability."

Existing state law applies the following provisions of the U.S. Civil Rights Act of 1964 to choice schools: "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participating in, be denied the benefits of, or be subjected to discrimination under any program or activity..."

61. June 1, 1999 letter, from The Institute for Justice, to Representative Christine Sinicki and Senator Richard Grobschmidt.

62. The March 26, 1999, Milwaukee Teachers' Education Assn. (MTEA) newsletter contained this item:

When 'Choice' Does Not Work Out...MTEA has been working with the People for the American Way since the 'Stand Up for Public Schools' rally was held in Milwaukee in December. The PFAW has asked the MTEA's assistance in identifying situations in which parents have returned their children to MPS after attendance at a voucher ("choice") or charter school...[P]lease let us know if you have an experience of a student returning to MPS that you would consider discussing with PFAW..."

About the Institute

The **Wisconsin Policy Research Institute** is a not-for-profit institute established to study public-policy issues affecting the state of Wisconsin.

Under the new federalism, government policy increasingly is made at the state and local levels. These public-policy decisions affect the life of every citizen in the state. Our goal is to provide nonpartisan research on key issues affecting Wisconsinites, so that their elected representatives can make informed decisions to improve the quality of life and future of the state.

Our major priority is to increase the accountability of Wisconsin's government. State and local governments must be responsive to the citizenry, both in terms of the programs they devise and the tax money they spend. Accountability should apply in every area to which the state devotes the public's funds.

The Institute's agenda encompasses the following issues: education, welfare and social services, criminal justice, taxes and spending, and economic development.

We believe that the views of the citizens of Wisconsin should guide the decisions of government officials. To help accomplish this, we also conduct regular public-opinion polls that are designed to inform public officials about how the citizenry views major statewide issues. These polls are disseminated through the media and are made available to the general public and the legislative and executive branches of state government. It is essential that elected officials remember that all of the programs they create and all of the money they spend comes from the citizens of Wisconsin and is made available through their taxes. Public policy should reflect the real needs and concerns of all of the citizens of the state and not those of spe-

THE WISCONSIN POLICY RESEARCH INSTITUTE, INC.
P.O. Box 487
Thiensville, WI 53092

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